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Held at Headquarters, New York, on Thursday, 1 October 2009, at 3.45 p.m.

Chairman:	Mr. Urbina	(Costa Rica)
later:	Mr. Shepherd (Vice-Chairman)	(United Kingdom)
later:	Mr. Urbina (Chairman)	(Costa Rica)

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The meeting was called to order at 3.45 p.m.

Thematic discussion

Theme (a): Assessment of the impact of resolution 1540 (2004), including through measures taken after its adoption

1. **Mr. Andemicael** (Expert), introducing the first background paper prepared by the group of experts, said that it was difficult to assess the impact of resolution 1540 (2004) since there was no single way to measure national legislative activities. Much legislation on the issue had already been in place before the adoption of the resolution. The experts had noted a significant increase from 2007 to 2008 in the number of legislative and enforcement measures that States had in place. It was however likely that some of the increase could be accounted for by better reporting rather than new measures. Another complicating factor was that many States had measures addressing multiple obligations or multiple laws covering specific obligations. It was however interesting to note that statistics showed that, in recent decades, there had been increases in the number of relevant legislative measures taken by States at times when there was a heightened risk awareness as a result of particular incidents. The number of States adopting measures each year also followed a similar pattern.

2. Assessing the impact of the resolution on risk reduction would require the collection of additional types of data. For example, the Committee could try to measure whether national implementation of the resolution had reduced the risks of proliferation to non-State actors. It was important to understand what was meant by "appropriate effective" implementation of the resolution, which could mean examining the compatibility of national systems. Currently, the Committee only monitored implementation at the national level, not the resolution's impact on the development of an effective international barrier to proliferation by and to non-State actors. Weakness at the international level would undermine national efforts and hence the overall effective implementation of the resolution. It would also be potentially valuable for the Committee to examine the compatibility of national control lists and the manner of their incorporation into national policy and practice, rather than simply monitoring whether States had such lists.

3. Another issue to consider was the different legislative approaches taken by States to implementing their obligations to adopt appropriate effective domestic legislation. Some States had used a single-act approach, while other States relied on multiple acts. However, the Committee did not know how those different approaches affected the compatibility of national systems with emerging international standards.

4. The Committee could perhaps increase its focus on issues of compatibility, including in the use of penalties and preventive enforcement. A first step in that process might be to initiate pilot studies on the compatibility of national systems for various paragraphs and subparagraphs of the resolution, and on the use of resources. The Committee might also consider a more authoritative promotion of useful control lists.

5. **Mr. Wuchte** (United States of America) said that the experts' analysis was useful and the recommendations contained in the background papers seemed consistent with the objectives contained in the Committee's current programme of work (S/2009/124).

6. Turning to the issue of the financing of proliferation-related activities, he said that his country supported the work of the Financial Action Task Force on Money Laundering (FATF) and recalled that Security Council resolution 1810 (2008) had referred to welcoming its guidance in regard to the implementation of resolution 1540 (2004). Resolution 1540 (2004) contained specific references to financing, obliging Member States to take measures, but gave no clear indication of what those measures should be. The fact that different States were taking vastly different approaches might create vulnerabilities that could be exploited. The Committee should therefore continue its study of the issue, in cooperation with FATF, to see which measures were the most effective in practice.

7. **Mr. Marschik** (Austria) said that assessing the impact of the resolution was very important. However, the task was complex, since the responsibility for implementation lay with each Member State and there was a wide range of different legal and constitutional systems. Additional data helped facilitate a before-and-after comparison of the legal framework within each State and could help in the development of best practices, but it was of little use in comparing the impact of legislation in different States. The suggestion that States could provide the Committee with advance information about planned legislation was useful, since it would then be able to offer assistance and use the opportunity to promote best practices.

8. A more authoritative promotion of and common approach to control lists would facilitate the Committee's work and ensure a more effective international barrier against the proliferation of weapons of mass destruction. In assessing the impact of the resolution, it would be prudent to make use of existing mechanisms and organizations as far as possible, for example the International Atomic Energy Agency (IAEA) Illicit Trafficking Database.

9. **Ms. Medina-Carrasco** (Observer for the Bolivarian Republic of Venezuela) said that in discussing the impact of resolution 1540 (2004) it was important to remember what type of document it was and where it emanated from. Countries had independently been making progress in adopting non-proliferation measures or legislation rejecting weapons of mass destruction since the 1960s, including in regions without such weapons. Other international agreements were more representative of States than the Security Council resolution, in the sense that States had made independent decisions to sign and ratify those Conventions.

10. To give the resolution more credibility in terms of implementation, the Committee should work on developing paragraph 1 of resolution 1540 (2004). As matters stood, the resolution had real limitations, since States used such a wide range of different measures. The Committee should request States that possessed nuclear, chemical or biological weapons to provide much more information about them in their reports. Otherwise, the responsibility for non-proliferation lay primarily with those States that did not have and were not interested in obtaining such weapons.

11. **Mr. Shepherd** (United Kingdom) agreed that looking at the development of laws would help the Committee develop a greater understanding of the problems States were facing in implementing resolution 1540 (2004). The resolution did not and should not require a single specific law, but consequently its impact was hard to gauge. The experts' analysis had shown that it was possible to adapt existing legislation to bring it into line with the resolution and that new laws relevant to the resolution could also have a broader scope, covering such things as institutional reform or specific technical issues. Hopefully that demonstrated that implementing the resolution need not be a burden for States.

12. In cases where national legislation was not specific to the resolution, it was difficult to measure accurately the resources that States were dedicating to its implementation or how many prosecutions had resulted. That was certainly the case for the United Kingdom. As the representative of Austria had noted, it was also difficult to compare the legislation of different countries, owing to the variations in jurisdictions. Currently, the best way for the Committee to measure States' understanding of the resolution's requirements was to examine the legislation they cited in their reports. Events such as the present series of open meetings were also very useful in assessing the status of implementation in each State.

13. **Mr. Mashkov** (Russian Federation) said that resolution 1540 (2004) balanced the interests of all Member States and required cooperation among States, not the identification of "guilty" parties. All States had an interest in ensuring that weapons of mass destruction and their means of delivery did not fall into the hands of non-State actors, including terrorists. The resolution, while it was not a convention, was nonetheless binding by virtue of its adoption under Chapter VII of the Charter. It was therefore important to make all Member States — and not just those that had adopted the resolution — aware of the need for implementation. Proliferation was not the only problem: any country could become involved, to some degree, in the transit of weapons of mass destruction. The resolution provided flexibility as to how different legal systems and enforcement regimes might go about fulfilling the obligation of ensuring implementation. Those who were bent on proliferation would take advantage of the weakest link in the chain, and it would be distressing when States that had deemed themselves untouched by the problem found that they were the first to be involved, not because they sponsored such activity, but because they were not paying sufficient attention to the issue.

14. Turning to the assessment of the impact of the resolution, he pointed out that the Committee experts had formulated matrices to be completed by Member States precisely in order to avoid qualitative assessments of measures. Assessing the impact of the resolution was difficult because different jurisdictions used different legislative measures. Furthermore, it was fundamental to know not what resources had been used for any given task, but what results had been achieved, because the costs of performing specific tasks could vary between countries and because countries were at different stages of implementation. It was difficult to

compare legal systems as each system had its own features and law enforcement traditions.

15. When the Committee took up the subject of cooperation, the Russian Federation would circulate a document containing proposals on key practical aspects that could make implementation efforts more effective. While the Committee experts had done a tremendous amount of work on assessment of implementation, the issue was clearly much more complicated than anyone had anticipated.

16. **Mr. Cuculi** (Observer for Italy) agreed that it was difficult, if not impossible, to make qualitative comparisons or assessments of implementation based on the quantitative data from national reports. The main challenge was to identify, among the measures adopted, those practical tools and initiatives that had been most effective in helping States fulfil their obligations under resolution 1540 (2004).

17. Preventive enforcement, whereby violations were prevented rather than suppressed after they had already occurred, was crucial. Outreach to interested actors — be they in the public or the private sector — should be conducted in order to raise awareness of the need to prevent proliferation of dual-use items. He hoped that the Committee members would be able to agree at the current session on suggesting the idea to Member States during the review process.

18. *Mr. Shepherd (United Kingdom), Vice-Chairman, took the Chair.*

19. **Mr. Mashkov** (Russian Federation) said that the reference in the background paper to the list in Security Council document S/2006/815 was incorrect, as that was not a control list but a sanctions list which, if he recalled correctly, pertained to nuclear material. Security Council resolution 1540 (2004) was not a sanctions resolution, but a resolution for cooperation between States to prevent the proliferation of weapons of mass destruction. Control lists were intended to draw the attention of States to dual-use items whose export required heightened vigilance but was not prohibited. The reference should be deleted to avoid alarming anyone. The important thing was to work together to strengthen the non-proliferation regime and prevent weapons of mass destruction from being acquired by non-State actors. He also sought clarification on what exactly was meant by the reference in the briefing to "more authoritative promotion of useful control lists".

20. **Mr. Cupitt** (Expert) explained that the list of dual-use items in S/2006/815 had been referred to merely as an example. Member States often asked Committee members and experts what lists they should consult. The Committee might consider referring them to certain lists that had been prepared in other contexts by the Security Council, by conventions or by regional bodies. The phrase "authoritative promotion" had been used to describe such a referral process.

21. **Mr. Wuchte** (United States) said that, according to the Committee's current programme of work, the working group on transparency and outreach would "consider and seize opportunities for industry and media outreach that would complement and support the work of States, which, by operative paragraph 8 (d) of resolution 1540 (2004), are called upon 'to develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws'". Several industry groups were participating in the side event currently taking place, indicating that the Committee was making good progress in that respect.

Theme (b): Assessment of whether States have undertaken measures derived from resolution 1540 (2004), including through the establishment and enforcement of appropriate criminal or civil penalties for violations of export control laws and regulations

22. **Mr. Andemicael** (Expert), introducing the second background paper prepared by the Committee experts, said that the paper broadened the context of the first background paper to show the relationships and highlight comparisons between framework legislation and enforcement and to indicate the status of national implementation of legislation for the three categories of weapons — nuclear, chemical and biological. The paper compared the situations in mid-2008 and mid-2009 based on the matrices, which had been updated internally for statistical purposes.

23. The numbers were much higher on the "legislative framework" side than the "enforcement" side of the matrices, which might reflect the fact that States had been reporting more on the former than the latter. Some reports, however, detailed enforcement measures without any indication of the basis in framework legislation, while other reports showed both legislation and enforcement. The reports had not, therefore, been particularly helpful in reaching clear conclusions as to the extent of implementation with respect to both legislation and enforcement, but had

merely provided an indication of what the situation might be.

24. The comparison between weapons categories had revealed more extensive implementation in the area of chemical weapons, in that more measures had been taken in that field, perhaps owing to the parallel between resolution 1540 (2004) and the comprehensive Chemical Weapons Convention. Member States must continue working intensively to ensure the full implementation of the resolution, particularly with respect to enforcement, and more specifically with respect to subparagraphs 3 (c) on border controls and (d) on export controls, on which relatively little progress had been made.

25. With a few exceptions, particularly regarding nuclear weapons prohibitions, States had continued to report more on their legislative frameworks than on enforcement measures, which might suggest that enforcement was still lagging. To confirm that that was not an artefact of data collection, the Committee should consider requesting States to provide more information on enforcement, which appeared to be an area of weakness.

26. **Mr. Cuculi** (Observer for Italy) said that, while he agreed with the analysis presented, he noted that the first five columns of the table — "legislative framework", "enforcement", "taking both legislative and enforcement" and "taking enforcement only" — were open to subjective interpretation, whereas the last column, "taking no measures", was more objective. By his calculation, on three quarters of the measures identified in the tables, more than 50 per cent of Member States had taken no measures to fulfil their obligations under resolution 1540 (2004). That was a striking figure that revealed a serious and widespread implementation problem, and the Committee should seek deliberations to ascertain the reasons for it. Certainly, national resources would be one relevant issue, which would be directly linked with capacity-building and international assistance and cooperation. All of the statements made during the general discussion had underlined the need to give priority to international assistance.

27. The Committee must also ask itself whether all of the sectors identified under the resolution were actually perceived as relevant by all Member States, or whether it was necessary to focus on a few, such as export and border controls. A country that had no chemical or biological facilities would tend to view those issues as less relevant, but all countries must have effective export control regulations to monitor imports, exports and transit of dual-use items, failing which they would have a serious safety and security issue regardless of whether they produced such items. In-depth analysis of the gaps in implementation was required, together with proposals on how the Committee could address them.

28. *Mr. Urbina (Costa Rica) resumed the Chair.*

29. **Mr. Wieland** (Austria) said that it was reassuring that a growing number of States were enacting legislative measures to prevent, prohibit and punish illegal activities under resolution 1540 (2004), but vulnerabilities still existed. The establishment and implementation of legal measures were lagging in the area of related materials, particularly biological materials. He hoped that heightened awareness of that fact, coupled with willingness to establish the necessary legal frameworks, would soon lead to improvements.

30. Austria had a wide range of legislative measures in place to prevent the proliferation of weapons of mass destruction that, together with the relevant international treaties, provided the legal framework for its implementation of the resolution. As the background paper made clear, however, even the best legislation might not suffice. Increased globalization and economic development had simplified access to materials related to weapons of mass destruction. Strong enforcement through effective border and export controls was essential to combat proliferation; national, regional and international assistance and outreach programmes should focus on such control measures as a priority.

31. **Mr. Mashkov** (Russian Federation) said that the only conclusions that could be drawn from the experts' analysis were that legislation was still inadequate in many countries and that the Committee must give the issue careful attention and draw on the considerable resources available to it in order to solve the problem.

32. The level of law enforcement was directly related to the existence of legislative provisions: if no legislation existed, then there would be no provisions for its enforcement or implementation. Legal experts sometimes argued that it was unnecessary to include a specific provision in the criminal code unless a violation had occurred. That did not mean that no enforcement was taking place, but that provisions were broad in nature because it was difficult to provide for specific cases.

33. The Committee should consider carefully what additional information was actually required from Member States and should not overburden them with reporting obligations, which diverted their attention from the practical work of implementation. At present, there was insufficient information on implementation for over 30 Member States. The Committee should ensure that it obtained enough information to have at least an overview of the status of implementation in those countries.

34. **Mr. Chatel** (France) welcomed the broader dialogue enabled by the open meeting format, which permitted Member States that were not currently Committee members to express their views.

35. The experts' report revealed clear gaps in the implementation of the resolution, not only in export controls, the biological sector, the financial sector, transport and means of delivery but also in participation as an accomplice. There were also geographical gaps; it was well known that difficulties in implementation were concentrated in certain geographical regions.

36. As previous speakers had pointed out, there was a margin for interpretation of the data: the situations of individual countries were different and therefore the gaps in implementation also had different meanings. Trafficking evolved and moved geographically. Traffickers were intelligent, and were naturally attracted to places where State structures and enforcement were weak. There was some virtue, therefore, in using the same standard of assessment for all Member States.

37. The history of resolution 1540 (2004) had unfolded in three stages: in the first stage, the rules had been adopted; in the second stage, those rules had been consolidated in resolution 1673 (2006); with the adoption of resolution 1810 (2008), there had been a move towards a third stage in which the focus would be on assistance, an area in which much could be done to address weaknesses in reporting as well as the geographical and functional areas in which implementation was lagging.

38. A rational risk-based approach could be adopted to solve problems in a single State, but in a universal organization in which consensus must be maintained, it was not always possible to take the most rational approach to risk. Within the constraints of its mandate, and with the provisions for assistance, the Committee must nevertheless attempt to make the rational and the equitable converge.

39. **Mr. Wuchte** (United States) agreed that resolution 1810 (2008) had clearly moved matters to the assistance and implementation stage. It was humbling to see the great attention that a wide range of States were devoting to resolution 1540 (2004). Nonetheless, the data from the Committee's 2006 and 2008 reports (S/2006/257 and S/2008/493) showed that an immense amount of work remained to be done. He wondered whether the tools were actually in place to assist not just a few Member States but all 192 of them, since, as the representative of the Russian Federation had rightly pointed out, weapons of mass destruction were everyone's problem.

40. The Committee's current programme of work already contained the necessary ideas on assistance; only slight adjustments would be needed to put them into effect. With respect to capacity-building projects focusing on implementation in States or regions that faced resource challenges, his delegation would welcome the submission of projects through the Committee's technical assistance template so that the United States could begin to work on such projects. The organization of regional and subregional meetings of requesting States and potential partner providers would be effective in delivering assistance to regions with specific needs and would help avoid an ineffective one-size-fits-all approach. With respect to regional and country visits, he was of the view that the 2006 and 2008 reports provided sufficient information and that States should not be asked to provide yet another set of data. By comparing the two reports, the Committee could see how much progress had been made and how much work remained to be done on implementation. He favoured the idea promoted by the European Union that consultants and other experts should be hired to help provide assistance. The Committee's eight experts did excellent work, but would be unable to meet the needs of 192 countries. Lastly, on the assignment of points of contact or project managers for resolution 1540 (2004) in international, regional and subregional bodies, he concurred with the favourable views of the Organization for Security and Cooperation in Europe and the Caribbean Community, which had already appointed a member to act as its 1540 regional coordinator. He hoped that some of those ideas would be reflected in the Committee's next comprehensive review report.

The meeting rose at 5.30 p.m.